

Attorney Docket No.: J3685(C)  
Serial No.: 10/526,850  
Filed: March 2, 2005  
Confirmation No.: 9359

### **REMARKS**

As noted by the Examiner, in the previous amendment, claim 1 was amended to require limitation that hair treatment composition comprises at least 20% by wt. water. It is further noted that this is a very critical distinction because it addresses an issue which as at the very heart of this problem, i.e., how to deposit silicon, not from spray or non-aqueous composition, but from a composition comprising large amounts of water. In such compositions, the formulations are typically applied and components readily washed off.

At page 3, lines 1-3 of the Office Action, the Examiner states that Murphy teaches a method of preparing hair composition by dispersing "the composite particles" and combining the dispersion with the remaining treatment ingredients without first drying "the aqueous dispersion of particles" (referring to col. 8, lines 3-12).

Applicants do not believe this is a fair reading of the reference. First, the dispersing aid is referred to as surfactant emulsifier or modified clay. That is, nowhere is it disclosed that cationic, for example, and clay should or must be used together. The goal of a dispersing aid is not to entrap silicone (and hinder its release from a full aqueous composition during the rinse), but to help lower the viscosity of silicone gum.

Further, with regard to the comment about "aqueous dispersion", it is not clear why this is an aqueous dispersion. Moreover, to the extent the dispersion is placed into

Attorney Docket No.: J3685(C)  
Serial No.: 10/526,850  
Filed: March 2, 2005  
Confirmation No.: 9359

a non-aqueous hairspray composition , again the problem or issue of rinse-off is not addressed and there is, therefore, no suggestion (which it is to say it is unpredictable) that the combination of clay, oppositely charged organic and benefit agent are advantageous in the way we have demonstrated in our examples.

Indeed, at page 3, lines 14-15 of the Office Action, the Examiner concedes that Murphy '418 fails to disclose compositions with at least 20% water. As we have noted, because Murphy is concerned with the problem of rinse-off from aqueous composition, there is nothing in Murphy motivating a person or ordinary skill in the art to form particles of our invention (i.e., specific combination which would form such particles). Nor is there any reason to use such particles (whether formed or not) in aqueous compositions.

Addressing this glaring deficiency, the Examiner argues it would be obvious to one of ordinary skill in the art to combine Murphy with Beauquey (US 5,846,549). Motivation is said to exist because both references are said to broadly disclose clays, silicone and cationic surfactant.

With regard to Murphy '418, as noted, it is not clear that particles of our invention would ever form based on teachings of the reference. With regard to Beauquey, there is again no necessary use of oppositely charged clay and organic molecule. There is further no teaching that the particles actually form and are subsequently incorporated (as per claim 1) into compositions as aqueous dispersion. Indeed, as far as applicants can tell, there is no disclosure of formation of aqueous dispersion comprising such particles.

Attorney Docket No.: J3685(C)  
Serial No.: 10/526,850  
Filed: March 2, 2005  
Confirmation No.: 9359

In short, in Murphy it is not clear if particles form; and there is certainly is no motivation to first form such dispersion of particles and use in separate compositions. The benefits of such dispersion in aqueous solution are nowhere recognized. As for Beauquey, again it would not appear such particles form and, since they apparently don't form in Murphy, combination of the two references would still not yield our composition.

Midha et al. reference does nothing to remedy this deficiency.

Finally, applicants would like to comment on various points made by the Examiner in her "Response to Arguments" starting at page 5 of the Office Action.

At page 5, bottom, point (1), the Examiner states that since the ethanol solvent used in Murphy is aqueous and is incompatible with clay, cationic and silicone, this meets our claimed limitation. First, it is not clear that there is an aqueous dispersion of particle formed as per our claim for reasons noted above. Second, there is no teaching of the use of these components in a composition with at least 20% water (i.e., 20% of final composition). Further, it is not critical to trap a benefit agent in a spray composition because the spray is directly sprayed on. There is no issue about deposition upon wash-off or rinse-off and there is thus no motivation to resolve the problem of wash-off from a composition with the levels of water used in our claimed composition.

At the bottom of page 6 of the Office Action, last paragraph, the Examiner argues that Murphy discloses negatively charged hectorite clay and cationic quaternary with net

Attorney Docket No.: J3685(C)  
Serial No.: 10/526,850  
Filed: March 2, 2005  
Confirmation No.: 9359

positive charge. Again, while these elements may be broadly described, there is no disclosure that there be formed an aqueous dispersion of these components together with benefit agent in the form of particles (in dispersion) which are then incorporated into the compositions. Indeed, such particles would not likely form in the spray composition of Murphy (which do not have at least 20% water anyway!). Further there is no motivation to find specifically oppositely charged components and benefit agent to form particles because the problem of wash-off is not an issue for such spray compositions.

Again at page 7, paragraph 2, of the Office Action, the Examiner states that clay and cationic would inherently form particles of our invention. First, as noted, it is not true that particles would form where the components are not separately formed in an aqueous dispersion prior to incorporation into the hair compositions. Further, even if they did form (which would require (i) specific selection of components broadly disclosed; and (ii) formation of aqueous dispersion), the dispersion is not placed in a composition having at least 20% water. For reasons noted above, in the absence of a recognition of the benefits which derive from such dispersion in aqueous compositions (i.e., knowledge of a problem and desire to fix), there is no reason to have used such dispersion on compositions with 20% water. This is a problem unrecognized by the art and the solution would not have been known, except in hindsight!

Finally, in point 3 (page 7), the Examiner states that Murphy et al. disperses clay and silicone. Once more there is no disclosure of aqueous dispersion and further no disclosure of using such dispersion in base having at least 20% water. Further, there is

Attorney Docket No.: J3685(C)  
Serial No.: 10/526,850  
Filed: March 2, 2005  
Confirmation No.: 9359

no problem when using spray, so there would be no motivation for use of a dispersion (were it to even form) in such compositions having at least 20% water.

In view of the discussion above, it is respectfully requested that the Examiner reconsider and withdraw all rejections of the claims.

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned agent invites the Examiner to telephone him at the number provided.

Respectfully submitted,

*Ronald A. Koatz*

Ronald A. Koatz  
Registration No. 31,774  
Attorney for Applicant(s)

RAK/pod  
(201) 894-2912